ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

The Provision of Interstate and International Interexchange Telecommunications Service Via the "Internet" by Non-tariffed Uncertified Entities	)))))	**RM No. 8775**

REPLY COMMENTS OF COMPUSERVE INCORPORATED

CompuServe Incorporated ("CompuServe"), by its attorneys, hereby files its reply to the initial comments concerning the Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking (Petition) submitted by America's Carriers Telecommunication Association (ACTA). In its Petition, ACTA requests that the Commission treat developers of Internet voice capability software as "telecommunications carriers" subject to Title II tariffing and certification requirements and initiate regulation of the Internet by "defining permissible communications over the Internet." Petition at 11. In its initial filing (Opposition), CompuServe opposed ACTA's Petition on procedural, statutory and public policy grounds.

I. THE OPPOSITION AMONG THE INITIAL COMMENTERS TO ACTA'S PROPOSAL TO REGULATE THE INTERNET AND DEVELOPERS OF INTERNET VOICE CAPABILITY SOFTWARE IS VIRTUALLY UNANIMOUS

CompuServe and virtually all parties filing initial comments objected to ACTA's proposal to regulate the Internet.

The initial comments explained that the Internet to date has been a great success, characterized by an endless stream of innovations and the availability of a host of competitive services, precisely because it has been allowed to grow unfettered by burdensome and costly regulation. See Information Technology Association of America ("ITAA") at 10; LDDS WorldCom at 3, Information Technology Industry Council ("ITI") at 7-8. The commenting parties recognized that the mere potential threat of regulation would stifle the development and widespread availability of innovative computer applications like those provided over the Internet. See United States Department of Commerce ("NTIA") at 2-3.

The commenting parties also were virtually unanimous in identifying the fallacy in ACTA's argument advocating regulation of the developers of Internet voice capability software. In addition to CompuServe, a wide variety of commenters, including local exchange carriers, interexchange carriers, software developers and technology companies, technology trade associations and public interest groups, explained that the software vendors named in ACTA's Petition are not "telecommunications carriers" within the meaning of the Communications Act and, thus, are not subject to FCC tariff and certification regulation. Pacific Bell at 3-4; Southwestern Bell at 2; Sprint at 3; AT&T at 2-3; National Telephone Cooperative Association at 2; Netscape at 4; Millin Publishing Group at 5; Commercial Internet eXchange Association at 6; ITI at 5; ITAA at 3. As

pointed out by NTIA, the software developers named in the ACTA Petition provide their customers with goods, not telecommunications services, and they at no time engage in the "transmission" of information which is the sine qua non of both a telecommunications service and a telecommunications carrier. NTIA at 1-2.

Various parties also echoed CompuServe's showing in the first round of pleadings that nothing in the recent revisions to the Communications Act or past Commission precedent provides a basis for Commission regulation of either Internet voice capability software or the Internet itself. See CompuServe at 6-12. ITAA, for example, explained that the Telecommunications Act of 1996 codifies the policy of the Commission to regulate only "basic" telecommunications services and not equipment or software. ITAA at 3-5. ITI discussed how the 1996 Act establishes statutory definitions for "the Internet" and "access software providers" that are devoid of references to them constituting or providing regulatable "telecommunications." ITI at 5-6. Netscape confirmed CompuServe's analysis that the 1996 Act codifies the basic/enhanced dichotomy established in the Computer II proceeding[1/] and that enhanced services such as Internet voice capability are not subject to the Commission's Title II regulation. Netscape at 12-13.

[1/] See Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II), 77.F.C.C. 2d 384, 433 (1980), recon., 84 F.C.C. 2d 50 (1981), further recon., 88 F.C.C. 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983), aff'd on second further recon., 56 R.R.2d (P&F) 301 (1984).

Even if there were such a thing as regulatable Internet "telecommunications services" -- which there is not -- no party disputed CompuServe's assertion that Internet access providers currently have no available means to identify and measure Internet usage for voice capability. Both interexchange carriers and Internet software developers confirmed that Internet access providers have no means to detect voice usage of the Internet, as it is currently impossible to distinguish between voice packets and other packets on the Internet. Sprint at 3; BBN Corporation at 6; Netscape at 17, 32. As CompuServe stated in its initial filing, developing a method to detect, measure and bill Internet voice usage -- even if possible -- would require a tremendous amount of system, administrative and other types of resources that would serve only to drive up prices for online and Internet access services and decrease customer satisfaction. CompuServe at 9.

The suggestion of one commenter, Southwestern Bell at 6 n.10, that the online service industry be required to devote the tremendous amount of resources necessary to develop mechanisms to detect and measure Internet voice usage should be rejected. Imposing the traditional common carrier rate and cost structure on Internet voice capability simply is not justified.

First, as CompuServe explained in its initial filing, Internet voice capability is not "functionally equivalent" to regulated telephone services. CompuServe at 4. A number of commenters pointed out that the procedures necessary for users to

take advantage of Internet voice capability are in some instances quite cumbersome, and the quality of the end product is still uneven. NTIA at 2 n.4; ITAA at 7 n.20; Netscape at 18 n.24; Telecommunications Resellers Association ("TRA") at 10.

Second, several of the commenting parties, including a regulated interexchange carrier, persuasively have argued that the amount of usage of the Internet for voice applications is not significant and does not require the Commission's urgent attention, especially at a time when the Commission must marshal its resources in order to complete a number of complex rulemakings in accordance with strict deadlines established under the 1996 Act. See, e.g., Sprint at 5. As NTIA states, the harm to long distance providers occasioned by the availability of Internet voice capability is "undemonstrated" and does not justify the risk of stifling the growth and use of the Internet by the imposition of unnecessary regulation. NTIA at 3.

II. THIS IS NOT THE APPROPRIATE PROCEEDING TO CONSIDER THE ACCESS CHARGE REFORMS ADVOCATED BY SEVERAL CARRIERS

As discussed above, NTIA and a substantial majority of the other commenting parties strongly opposed ACTA's request that the Commission assert jurisdiction over the Internet and apply tariff and certification regulation to developers of Internet voice capability software. Several common carriers, however, even as they affirmatively opposed regulation of the Internet and/or tariff regulation of Internet voice capability, see, e.g., LDDS WorldCom at 4, Southwestern Bell at 4, did express sympathy

with some of the "concerns" underlying ACTA's Petition. In part, these carrier concerns focus on the alleged ability of new entrants to provide voice capability on the Internet "for free," while established interexchange carriers providing traditional long distance services must pay access charges. See, e.g., LDDS WorldCom at 10; TRA at 7.

In fact, users of Internet voice capability are not able to place national or international calls for "free." As several parties explained in their initial comments, users of Internet voice capability incur hardware expenses (computers, modems, microphones), software expenses, and recurring online service expenses for Internet access. CompuServe at 7; Netscape at 27, ITAA at 7 n.20. For example, subscribers to CompuServe's most popular consumer offering pay $9.95 per month for the first five hours of usage (including Internet access) with additional usage billed at the rate of $2.95 per hour (almost five cents per minute). These recurring usage fees are set, in part, to recover the underlying communications costs that CompuServe incurs from local exchange carrier connections and long distance service providers in order to provide its online information and Internet access services.

Even though Internet voice capability certainly is not "free," it is true that users of Internet voice capability may not be subject to the same level of access charges as common carriers. For that reason, some parties advocate that online service and Internet access providers should be treated as

carriers, in part by eliminating the so-called enhanced service provider "exemption" from carrier access charges. See, e.g., Pacific Bell at 8; Southwestern Bell at 5-6.

This proceeding, however, is not the forum for examining the appropriate access charge treatment of enhanced service providers. Not all enhanced service providers provide Internet voice capability, and certainly not of the same type. Moreover, the Commission already has announced its intention to initiate a separate rulemaking to investigate comprehensive reform of the interstate access charge regime. It would be more appropriate to examine the access charge treatment of enhanced service providers in such a rulemaking rather than in a proceeding such as this, which by its terms is limited to only one subset of enhanced services (Internet voice capability) and which has not been subject to the Federal Register notice requirements applicable to rulemaking proceedings.

Indeed, the Commission has reviewed the appropriate access charge treatment of enhanced service providers several times over the past dozen years, indicating that this is a complex issue requiring a more comprehensive investigation than is feasible in this limited proceeding. In a future rulemaking on access charge reform, the parties at least would have an opportunity to provide data and arguments on the following

important issues relevant to any determination of the access charge treatment of enhanced service providers ("ESPs"):

- the fact that enhanced service providers already are paying the full cost of the local exchange facilities they use;
- the fact that imposition of carrier access charges on ESPs would have a severe economic impact on the information services and Internet access services industries just as those industries are achieving economies of scale and a critical mass of consumer acceptance in the marketplace;
- whether private networks that provide enhanced services also will be subject to carrier access charges and, if not, whether such a distinction constitutes unreasonable discrimination prohibited by Section 202(a) of the Act in light of the fact that the use of local exchange facilities by ESPs and by users of large private networks is essentially identical;
- the fact that it is impossible to determine whether enhanced services traffic is jurisdictionally interstate or intrastate for purposes of determining access charges; and the fact that the Commission itself has acknowledged that a plan to detect and measure enhanced service provider traffic has not been developed;
- whether a significant increase in access charges payable by ESPs will promote service and facilities bypass;
- the fact that, in order to assess carrier access charges on ESPs, the Commission for the first time would be required to try to develop a mechanism to identify each of the thousands of ESPs now in the marketplace, a virtually impossible task;
- the fact that imposition of increased access charges on ESPs appears to be inconsistent with U.S. policy, as enacted in new Section 230(b)(1) of the Communications Act, "to promote the continued development of the Internet and other interactive computer services and other interactive media."

As this list indicates, the issues raised by the proposals to modify the access charge treatment of enhanced

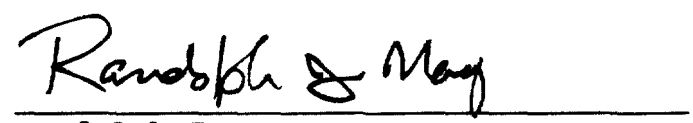
service providers are complex and should be considered, if at all, only in a rulemaking proceeding in which all interested parties will have the opportunity to comment after receiving notice by Federal Register publication.

III. CONCLUSION

The Commission should both deny the ACTA Petition for the reasons discussed in CompuServe's May 8, 1996, Opposition, and reject the proposals of the carriers who advocate the modification in this proceeding of the access charge treatment of enhanced service providers.

Respectfully submitted,

COMPUSERVE INCORPORATED



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CERTIFICATE OF SERVICE

I, Marcia Towne Devens, do hereby certify that true and correct copies of the foregoing document, "Reply Comments of Compuserve Incorporated," were served by first-class U.S. Mail, postage prepaid, this 10th day of June, 1996, on the following:

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